

APPEAL NO. 021098  
FILED JUNE 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 8, 2002. The hearing officer determined that the respondent's (claimant) impairment rating (IR) cannot be determined without a valid designated doctor's report, and that the IR issue in dispute is returned to the Official Actions Officer (OAO) for the appointment of a second designated doctor. The appellant (carrier) appealed, arguing essentially that the hearing officer erred in determining the IR issue, and remanding the case for the appointment of a second designated doctor. The claimant filed a response, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury while working for the employer, and that she had received benefits from the carrier; that Dr. P, the carrier's doctor, assessed a 0% IR on October 12, 1998, which the claimant disputed; that Dr. F was appointed the designated doctor, who examined the claimant three times before assessing a 13% IR on his fourth examination; that Dr. M, the claimant's treating doctor, assessed a 35% IR; that two generic letters of clarification were sent to the designated doctor before a specific letter of clarification was sent, and no further letters of clarification will be requested by the parties; that the claimant attained maximum medical improvement on August 4, 2000, by operation of law; and that no spinal surgery has been performed and none has been recommended or anticipated.

The carrier argues that the hearing officer erred in determining that the designated doctor's opinion is invalid because he failed to include an impairment in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), Table 49, for specific disorders of the claimant's spine. A narrative report by Dr. F dated June 14, 2001, reflects that the cervical extension is 50° and that 75° is normal, and that for the cervical impairment "there is 0% whole person impairment related to the cervical spine with regard to normal range of motion [ROM]." On August 1, 2001, at the claimant's request, the Texas Workers' Compensation Commission (Commission) sent a letter of clarification to Dr. F inquiring about the cervical ROM and the omission of the 4% specific diagnosis rating in the cervical spine and a 5% specific diagnosis rating in the lumbar spine. On August 6, 2001, Dr. F responded that he would not change his opinion. On November 5, 2001, the Commission sent a second letter of clarification to Dr. F regarding the cervical ROM. On November 14, 2001, Dr. F responded that in his opinion "the [ROM] testing was

invalid due to lack of effort, and therefore no [IR] was given to this.” On December 19, 2001, the Commission sent a third letter of clarification to Dr. F regarding the cervical ROM. On January 17, 2002, Dr. F responded that he did not assign a specific disorder to the cervical spine or a cervical ROM because in his opinion there was a “pre-existing condition,” and the claimant “demonstrated ratcheting on examination and limited effort.”

The report of the designated doctor chosen by the Commission is given presumptive weight and the Commission shall base its determination on that report unless the great weight of the medical evidence is to the contrary. Section 408.125(e). Under Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) and Texas Workers’ Compensation Commission Appeal No. 013042-s, decided January 17, 2002, the designated doctor’s responses to requests for clarification made by the Commission are also afforded presumptive weight. In the present case, the claimant initiated the request for clarification of the designated doctor’s report on three occasions, however the designated doctor refused to change his rating. The hearing officer commented that

there is nothing in the [AMA Guides] that mandates that an examinee be evaluated by either Table 49 or [ROM]; the doctor is to utilize both evaluation methods and use Combined Values Table if he assesses an [IR] for either [ROM] or Table 49, Specific Disorders.

Additionally, although the Appeals Panel has stated that appointing a second designated doctor should be done rarely, the misapplication of the AMA Guides by the first designated doctor in response to the request for clarification is certainly a valid reason for appointing a second designated doctor. We perceive no error in the hearing officer’s decision to order the OAO to appoint a second designated doctor.

Additionally, the carrier argues that the hearing officer should have chosen an IR by one of the other doctors. Dr. P the carrier’s doctor, assessed a 0% IR on October 12, 1998, and Dr. M, the claimant’s treating doctor, assessed a 35% IR. There has been no final resolution of the IR issue by a designated doctor, and the other medical reports in evidence are conflicting in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer’s decision is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The carrier argues that the hearing officer should have requested clarification instructing the designated doctor to do so. The parties stipulated that that “two generic letters of clarification were sent to the designated doctor before a specific letter of clarification was sent, and no further letters of clarification will be requested by the parties.” We perceive no error in the hearing officer’s decision to order the OAO for the appointment of a second designated doctor to determine the claimant’s IR.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **HARTFORD CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS  
ATTORNEY  
450 GEARS ROAD  
SUITE 500  
HOUSTON, TEXAS 77067.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge